

The 15/16th June, 1973

No. 6099-4Lab-73/22815.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Sham Ice, Oil & General Mills, Panipat.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 20 of 1972

Between

SHRI MOHINDER KUMAR WORKMAN AND THE MANAGEMENT OF M/S SHAM ICE OIL & GENERAL MILLS, PANIPAT

Present.—

Shri Onkar Parshad, for the workmen.

Shri D. S. Rekhy, for the management.

AWARD

Shri Mohinder Kumar concerned workman was in the service of M/s Sham Ice Oil & General Mills, Panipat, as a Driver in the Ice Plant. The management terminated his services with effect from 15th June, 1971. He raised a demand for reinstatement but without any satisfactory response from the management. This gave rise to an industrial dispute. Conciliation proceedings were initiated on the demand notice given by the Textile Mazdoor Sangh Regd., Panipat, through its General Secretary Shri Karan Singh which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the above dispute for adjudication to this Tribunal—vide Order No. ID/KNL/165-A-72/8657, dated 2nd March, 1972, with the following term of reference :—

Whether the retrenchment of Shri Mohinder Kumar was justified and in order? If not, to what relief is he entitled?

Usual notices were given to the parties. In the statement of claim filed on behalf of the workmen it was urged that he was a senior workman having been in service for six years or so and the management had brought him under retrenchment without any justification and the requirement of law in this behalf having not been complied with the retrenchment was illegal and he was entitled to reinstatement with continuity of previous service and full back wages. A plea of victimization was also raised.

The management controverted the above allegation of the workman and pleaded in the written statement filed in the case that as a matter of fact the Ice Plant had been closed for want of business which had resulted into automatic termination of the services of this workman whose appointment was merely of a seasonal nature and since the Ice Plant had not been restarted the question of his reinstatement or re-employment did not arise. Objections as to the validity of the demand notice the order of reference and jurisdiction of this Tribunal in the matter were also raised.

The following issues arose for determination from the above pleadings of the parties :—

- (1) Whether the demand notice leading to the present reference is illegal? If so, with what effect?
- (2) Whether it is not a case of retrenchment but automatic termination of the services of Shri Mohinder Kumar concerned workman due to the closure of the seasonal plant and therefore this Tribunal has no jurisdiction to adjudicate upon the dispute the subject matter of the reference? (on management)
- (3) If issue No. 2 is not proved whether the retrenchment of Shri Mohinder Kumar was justified and in order? If not, to what relief he is entitled? (on management)

The management has examined one witness Shri Bhagwan Dass, Accountant and placed reliance upon an attested copy of the order, dated 8th May, 1972, of the Sales Tax Assessing Authority, Panipat, Ex. M-1. In cross examination two more documents, letters, dated 27th May, 1971, of the Union Ex. M-2 and the retrenchment notice, dated 2nd December 1971 issued to Shri Mohinder Kumar Ex. M-3, have been admitted by M.W. 1 Shri Bhagwan Dass, Accountant.

Shri Mohinder Kumar concerned workman has himself come into the witness box as W.W. 1 and proved the demand notice dated 5th November, 1971, given by the Union for 50 per cent increase in the wages of the workers.

The case has been argued on both sides and I have given a careful consideration to the facts on record. The issues may be taken up separately.

Issue No. 1.—Nothing worth consideration has been urged on behalf of the management to show that the demand notice dated 6th December, 1971 leading to the present reference was illegal. M.W. 1 admits the receipt of the demand notice and the demand raised by the workmen having not been accepted by the management an industrial dispute did exist which has been referred for adjudication to this Tribunal. The issue is therefore decided against the management.

Issue No. 2.—Even if it be assumed for the sake of argument that the service of Shri Mohinder Kumar had been rendered surplus on account of the closure of the seasonal plant it can not be held that this Tribunal has no jurisdiction to adjudicate upon the demand raised by the workmen or that the order of reference is invalid on that ground. The issue to this extent is decided against the management holding that the reference is valid and this Tribunal has jurisdiction to adjudicate upon this dispute. The question whether it is a case of automatic termination of the services of the workman or it is a case of retrenchment of his services by the management can better be discussed in issue No. 3 relating to the merits of the case.

Issue No. 3.—As already pointed out the plea of the management in the case is that the Ice Plant where Shri Mohinder Kumar was working as a Driver was closed on 15th June, 1971 for want of business. This fact as such has been admitted by Shri Mohinder Kumar and he has further stated in his cross examination that because of the defect in Ice Plant it did not work in the following season also. It is thus common ground between the parties that the Ice Plant had in fact been closed for want of business and defect in the machinery. As already stated, Shri Mohinder Kumar was working as a Driver at the Ice Plant and since the Ice Plant itself was closed his services naturally became surplus and the question of his being retained in service in the Ice Plant did not arise. It has been argued that he could be retained in the finishing or the milling department taking into consideration the length of his service but it has no

been shown that there was any post of a Driver against which he could be appointed in the present concern. The management had, offered to take him on duty as a labourer or an attendant in the finishing or the milling section which was, however, declined by him as would be clear from the perusal of his statement in answer to the Court Question.

From the above discussions it would appear that the closure of the part of the establishment, i.e., the Ice Plant had to be brought about by the management for unavoidable reasons beyond its control due to lack of business or break down of the machinery which had rendered the job of the driver of the Ice Plant as surplus and he had, therefore, to be brought under retrenchment. However, the management had to comply with certain requirements of law before affecting the retrenchment of the present workman who was entitled to notice pay and compensation as contemplated under section 25 FFF of the Industrial Disputes Act, 1947. Since it has not been stated on behalf of the management that he had not been in continuous service for one year or more as alleged by him. In the circumstances the impugned order of retrenchment of the present workman can not, therefore, be held to be valid for want of compliance with the mandatory provision of law discussed above. The plea of victimisation raised by the workman which has not been sustained by any evidence does not require any consideration. It is further belied by the offer made by the management to re-employ him as attendant or labourer in some other department. His services had to be brought under retrenchment on account of the closure of the Ice Plant. There was no question of the management having been actuated by any notice of victimisation in the matter.

In view of my above discussions the issue is decided against the management and it is held that the retrenchment in question of the workman concerned was not brought in a legal manner after complying with the necessary requirements of the law and as such it cannot be held to be justified and in order. The issue is decided accordingly in his favour and against the management.

The question that next arises for consideration in the case is as to what relief is the workman entitled to. The Ice Plant having been closed by the management in un-avoidable circumstances beyond its control and the workman having further admitted that it has not been re-started. There is no question of his being reinstated or re-employed as Driver in the Ice Plant. He has declined the offer of the management for his re-employment as attendant or labourer and there is no evidence to show that he is qualified or any other post in the other department of the mills. He is, therefore, clearly not entitled to the relief of reinstatement but he is certainly entitled to the notice pay and retrenchment compensation as provided under section 25 FFF of the Industrial Disputes Act, 1947. The award is made accordingly. He is also entitled to Rs 100 as costs of the present proceedings.

Dated the 31st May, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 568, dated the 3rd June, 1973

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 31st May, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 16th June, 1973

No. 6152-4-Lab-73/22817.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and management of Messrs Haryana Steel Tubes, Mathura Road, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 206 of 1971

Between

SHRI GIRDHARI AND THE MANAGEMENT OF MESSRS HARYANA STEEL TUBES, MATHURA ROAD, FARIDABAD

Present.—

Shri Chaman Lal Obroi, for the workmen.

Nemo, for the management.

AWARD

This judgment will dispose of this and the connected references Nos. 207, 209 and 210 of 1971 between the management of Messrs Haryana Steel Tubes, Mathura Road, Faridabad, and its workmen which stand consolidated by order of my learned predecessor as there are common points involved in all the cases. The facts material for the judgment may briefly be stated as under.

The management of Messrs Haryana Steel Tubes, Mathura Road, Faridabad, terminated the services of its workmen, Sarvshri Girdhari, Ram Pat, Ram Achal and Banwari Lal with effect from 4th June, 1971. They approached the management contending that the termination of their services was illegal and without any justification and they were entitled to reinstatement and full back wages. The management did not accept this demand. This gave rise to industrial disputes in respect of each one of the workman concerned. Conciliation proceedings were initiated which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the dispute in each case was referred for adjudication to this court by the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the term of reference in all the cases being whether the termination of services dismissal of the workmen concerned was justified and in order? If not, to what relief was he entitled?

Usual notices were given to the parties. The management took the plea in each case that the concerned workmen had himself abandoned service and as such he was not entitled to any relief by way of reinstatement and payment of back wages. My learned predecessor framed the following two issues which are common in all the cases.

1. Whether the workman left the service of the management of his own accord?
2. If issue No. 1 is not proved whether the termination of services of the workmen was justified and in order? If not, to what relief is he entitled?

Shri Ashok Arora, Manager appeared on behalf of the management and deposed that Sarvshri Ram Pat, Girdhari Lal and Banwari Lal had been laid off from 15th May, 1971 to 4th June, 1971 but they did not turn up for duty on 6th June, 1971, and were, therefore, marked absent. Similarly Shri Ram Achal who was laid off from 15th May to 6th June, 1971 did not report on 7th June, 1971 and he was also marked absent. He further stated that these workmen since remained absent from duty continuously till 19th June, 1971, their names were struck off the rolls. According to this witness there were in all 65 workmen in the establishment but for want of business their number had been considerably reduced and when he made the above statement all the 9 workmen on rolls were senior to the present workmen. In cross-examination it was admitted by him that no notice of the said lay off was given to the concerned workmen nor any intimation was sent to the authorities in this respect.

The management did not produce any other evidence. In fact, it elected to withdraw itself from the proceedings and none appeared on behalf of the management to contest the claim of the workmen in some dates of hearing fixed in the cases. Evidence of the workmen was, therefore, recorded *ex parte* against the management.

Sarvshri Girdhari, Banwari Lal and Ram Achal have themselves come into the witness-box. Shri Chaman Lal Obroi, General Secretary, Faridabad Engineering Workers Union, Faridabad, has also made his statement as W.W.4. According to their sworn testimony the lay off had been lifted by the management on 3rd June, 1971 but excepting the present workmen all the workers in the establishment were taken back on duty. They have further deposed that they had been approaching the management in person for their reinstatement but without success. They had then given the demand notice through the union, but the management did not pay any heed to their request. In the conciliation proceedings also the management had not shown any willingness to take them back on duty and hence the present references. The workmen and the union leader Shri Chaman Lal Obroi have further sworn testimony to the effect that during this period of forced un-employment they have not been gainfully employed anywhere.

Taking into consideration, the fact on record, I am fully satisfied that the present workmen had not abandoned service of their own accord as alleged by the management and that the management had terminated their services without any justification. No notice in writing with regard to the said lay off had been given to the workmen nor had the management given any intimation in this behalf to the authorities concerned. No attendance register or any other documentary evidence has been brought on record to show that the present workmen had in fact remained absent from duty after the lay off had been lifted. There is no reasonable ground made out to disbelieve the sworn testimony of the workmen and the union leader in this behalf. From their statements it is further proved that they have not been gainfully employed anywhere during the intervening period of their forced un-employment.

In view of the above, both the issues are decided against the management and in favour of the workmen and it is held that the termination of their services by the management was not justified and in order and as such they are entitled to reinstatement with continuity of their previous services and full back wages. The award in each case is made accordingly. The workmen are further entitled to Rs 100 in all as the costs of the present proceedings.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Dated 7th June, 1973.

No. 1509, dated 11th June, 1973

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 5996-4Lab-73/22973.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and management of Haryana Roadways, Rohtak.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK
Reference No. 2 of 1972

Between

SHRI Inder Pal Singh AND THE MANAGEMENT OF HARYANA ROADWAYS, ROHTAK

Present :

Shri S.N. Vats for the workman.
Shri Suresh Chand, for the management.

AWARD

Shri Inder Pal Singh was in the service of Haryana Roadways, Rohtak, as Helper in the workshop from 18th April, 1970. The management terminated his services w.e.f. 21st March, 1972. He raised a demand for reinstatement but without success. This gave rise to an industrial dispute.

The Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the above dispute for adjudication to this court vide order No. ID/RK/182-1-72/40771-75, dated the 23rd November, 1972 with the following term of reference :—

“Whether the termination of services of Shri Inder Pal Singh was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties. An amicable settlement has been arrived at between the parties. Shri Inder Pal Singh has been re-employed as Helper in grade Rs 80—2—90/3—120, vide order dated the 9th May, 1973 and he has agreed to join his duty today foregoing his claim for back wages. Statements of the parties have been recorded.

In view of the above, no further proceedings are called for in the present reference and the award is made in terms of the above settlement holding that Shri Inder Pal Singh concerned workman is entitled to remain in service of the respondent as a helper in the grade Rs 80—2—90/3—120 vide order dated the 9th May, 1973 of the management as a fresh employee without any right to claim back wages. In the circumstances, there shall be no order as to costs.
Dated the 2nd June, 1973.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1253, dated the 4th June, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

S.N. BHANOT,
Commissioner for Labour and Employment,
and Secretary to Government, Haryana.